Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SEONG-BONG KIM

Appeal No. 2002-1045
Application 09/131,890

HEARD: APRIL 16, 2003

Before JERRY SMITH, LEVY, and BLANKENSHIP, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-21, which constitute all the claims in the application.

The disclosed invention pertains to a picture decoding synchronizing circuit and method. The decoding synchronization is controlled in units of a picture, in a variable length decoder using PTS (presentation time stamp) and DTS (decoding time stamp)

information in the received signal. A calculated DTS of the current picture is generated by adding previous DTS to an offset. The transferred DTS is checked with the calculated DTS to see if there is an error in the transferred DTS. If no errors are detected in the DTS, then the transferred DTS is determined to be the DTS value of the current picture. If an error is determined, the calculated DTS is used. By controlling the picture decoding using the determined DTS value, the bit buffer does not underflow or overflow and the decoded data is displayed naturally on a screen.

Representative claim 1 is reproduced as follows:

1. A picture decoding synchronizing circuit, comprising:

a detector for detecting whether at least one of a presentation time stamp (PTS) and a decoding time stamp (DTS) which are transferred through an input bit stream is distorted by an error, and outputting a detect signal;

a determiner for determining an actual DTS value using a transferred PTS and DTS if no errors are detected from the transferred PTS and DTS according to the detect signal, and determining an approximated DTS value using the value obtained by adding a DTS value of a previous picture to a predetermined offset value, if an error is detected in at least one of said PTS and said DTS; and

a decoder for decoding the input bit stream in units of a picture, in synchronization with one of the actual DTS value and the approximated DTS value.

The examiner relies on the following references:

Rim et al. (Rim)	5,771,075	June 23, 1998
Suzuki	5,808,722	Sep. 15, 1998 (filed May 31, 1996)

Claims 1, 5, 12, 16, 17 and 21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Rim. Claims 2-4, 6-11, 13-15 and 18-20 stand rejected under 35 U.S.C. § 103. As evidence of obviousness the examiner offers Rim in view of Suzuki.

Rather than repeat the arguments of appellant or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon does not support either of the

rejections made by the examiner. Accordingly, we reverse.

We consider first the rejection of claims 1, 5, 12, 16, 17 and 21 under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Rim. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he has read the invention of these claims on the disclosure of Rim [answer, page 4]. Appellant argues that Rim does not operate in the manner asserted by the examiner. Specifically, appellant argues that there is no teaching or suggestion in Rim for correcting the received PTS/DTS if there is an error in the PTS/DTS because Rim assumes that the received PTS/DTS is correct and synchronizes the decoder clock based on that. Thus appellant argues that with respect to each of the embodiments disclosed by Rim, Rim teaches comparing a

calculated PTS/DTS signal with a PCR/SCR to correct a decoder clock, but does not teach detecting errors in a received PTS/DTS value or correcting a received erroneous PTS/DTS [brief, pages 3-10]. The examiner responds by disagreeing with appellant's arguments [answer, pages 7-9]. Appellant essentially repeats his position as argued in the brief [reply brief].

We will not sustain this rejection of the examiner for essentially the reasons argued by appellant in the briefs. As argued by appellant, the value of PTS/DTS in Rim is assumed to be correct and is used to check the accuracy of the program clock reference (PCR) and system clock reference (SCR). The PTS/DTS value is compared to a PCR/SCR value and the difference is used to determine whether the decoding side is faster or slower than the encoding side. There is no approximated DTS value calculated in Rim which is used when there is an error detected in the DTS or PTS values. Since Rim does not disclose every element recited in the rejected claims, we do not sustain the rejection of these claims as anticipated by the disclosure of Rim.

We now consider the rejection of claims 2-4, 6-11, 13-15 and 18-20 under 35 U.S.C. § 103(a) based on Rim and Suzuki. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal

conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the

evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived by appellant [see 37 CFR § 1.192(a)].

We will not sustain this rejection of the examiner because the examiner has failed to establish a prima facie case of obviousness. Rim is deficient for reasons discussed above. The additional teachings of Suzuki do not overcome the deficiencies of Rim. Therefore, the examiner's rejection which relies on Rim does not establish a prima facie case of obviousness for reasons discussed above.

In summary, we have not sustained either of the rejections made by the examiner. Therefore, the decision of the examiner rejecting claims 1-21 is reversed.

REVERSED

JERRY SMITH Administrative Patent Judge	)	
STUART S. LEVY Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
HOWARD B. BLANKENSHIP Administrative Patent Judge	)	

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